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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 5 - 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Interconnection and Resale Obligations) CC Docket No. 94-54
Pertaining to Commercial Mobile Radio Services)

To: The Commission

COMMENTS OF 360° COMMUNICATIONS COMPANY

360° Communications Company ("360°")¹, hereby respectfully submits its comments in response to the Commission's request for additional comment in the above-captioned proceeding.² Specifically, the Commission inquires whether it should adopt an automatic roaming rule governing cellular, broadband PCS and covered SMR providers. 360° again strongly discourages any Commission regulation of automatic roaming and urges the Commission instead to continue to rely on market forces, rather than regulatory requirements, to shape the development of the wireless industry.

I. MARKET FORCES ARE SUFFICIENT TO ENSURE THE FORMATION OF APPROPRIATE ROAMING AGREEMENTS

In August, 1996, the Commission sought comment on whether or not it

¹ 360° is the country's second largest publicly held cellular company provider. The company offers wireless voice and data services to 2.4 million customers in more than 100 markets throughout 15 states. 360° also provides residential long distance and paging services.

² See "Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks, CC Docket No. 94-54, Public Notice, DA 97-2558 (Dec. 5, 1997).

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should mandate rules governing the provision of automatic roaming for Commercial Mobile Radio Service ("CMRS") providers.³ In response to the Commission's inquiry, 360° submitted comments urging the Commission to refrain from adopting any unnecessary regulation. 360° noted then, and re-emphasizes today, that automatic roaming agreements should be left to marketplace forces. The explosive growth of the wireless industry and the widespread existence today of automatic roaming agreements among CMRS providers illustrate that open-market forces are working.

Indeed, it is clear that incumbent carriers have a revenue incentive to negotiate such agreements with new entrants. As the Commission correctly observed in its earlier proceeding, "roaming capability is widely available to cellular subscribers, is highly valued by those subscribers, and is one of the industry's fastest growing sources of revenue."⁴ This is still true today for the broader CMRS marketplace. Moreover, as mentioned above, not only do incumbent carriers have revenue incentives to negotiate, there is now evidence to illustrate that these carriers are negotiating and executing roaming agreements with new entrants. For its part, 360° to date has entered into at least five automatic roaming agreements with broadband PCS carriers, and is in the process of negotiating additional agreements with twelve new carriers. Thus, it is evident that automatic roaming will continue to evolve effectively without federal

³ Interconnection and Resale Obligations Pertaining to Local Exchange Carrier Provision of Commercial Mobile Radio Services, CC Docket 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462 (1996).

⁴ *Id.* at 9469.

regulatory intervention.

360° understands the Commission's objectives of furthering the goals and requirements of the Communications Act of 1934, as amended, to promote competition and reduce regulation. These goals help ensure low prices for customers and the rapid deployment of new technology. When the cellular industry first began, the Commission wisely chose not to mandate automatic roaming among cellular providers, and the results -- widespread automatic roaming, record-breaking growth, enhanced technology, and competitive prices -- prove that this decision was in the public interest. 360° submits that allowing market forces to continue to govern the development of automatic roaming in the CMRS marketplace, is consistent with the Commission's goals of promoting competition and streamlining regulation.

II. FEDERALLY-IMPOSED ROAMING REGULATIONS MAY CAUSE UNDUE BURDENS ON INCUMBENT CARRIERS

The Commission correctly recognized in its earlier proceeding that "roaming regulations may impose significant costs and burdens on CMRS providers and that we should narrowly tailor our actions to avoid placing an undue burden on such providers."⁵ 360° strongly concurs. There are many factors that affect the negotiation of roaming agreements, including geography, amount and balance of traffic, deliverable customers and technical feasibility. If carriers are free to negotiate automatic roaming agreements without the intervention of federal

⁵ *Id.* at 9470.

regulation, they can negotiate acceptable terms that adequately account for each of these considerations.

For example, fraud and technical compatibility issues must be addressed during roaming negotiations to avoid creating an undue burden on incumbent carriers. To avoid exposure to losses due to fraud, roamed-upon operators must be able to negotiate terms and conditions that will ensure that new entrants are responsible for all charges associated with the use of their numbers on another carrier's system, including any fraud that may occur. Incumbent carriers currently negotiate such terms with other CMRS incumbents and 360° has been doing so with new entrants. New entrants, like incumbent providers, must be capable of deploying an intersystem validation system compatible with IS41 in order to discourage fraud within the service area.

In addition, incumbent providers must be able to negotiate provisions to protect themselves from undue costs to accommodate the technical feasibility of roaming between different systems. This is particularly crucial given that new entrants are unlikely to continue to need certain roaming services once they complete the build-out of their own systems. If the roamed-upon incumbent operator were forced to bear the costs of making the systems technically compatible, that operator would face a significant stranded investment after the new entrant no longer required roaming capabilities. Federal regulation could thwart the balance of these negotiations and impair the ability of incumbent carriers to secure such protections. Instead, the Commission must allow CMRS carriers, including new entrants, to continue to negotiate in the open market where

these factors have been, and will continue to be, taken into consideration to ensure acceptable terms for both parties.

III. CONCLUSION

For the foregoing reasons, 360° urges the Commission to refrain from imposing any automatic roaming requirements on CMRS providers. 360° submits that market forces are fully sufficient to ensure that automatic roaming capability is made available to emerging CMRS operators. 360° and other incumbent providers continue to have strong economic incentives to negotiate automatic roaming agreements with new CMRS entrants and, to date, have entered into many such agreements. Mandating or otherwise regulating automatic roaming agreements could thwart this progress and impose undue burdens on incumbent carriers. In contrast, allowing the marketplace to continue to shape the development of the wireless industry has proven, and will continue, to be consistent with Commission policies and in the public interest.

Respectfully submitted,

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January 5, 1998